

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1940 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MUSAMIYA IMAM HAIDERBUX RAZVI

Versus

MANUBHAI BECHARBHAI PATEL

Appearance:

MR SK BUKHARI for Petitioner
MR BN RAVAL for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 08/12/2000

ORAL JUDGEMENT

#. The petitioner is the original plaintiff of Special Civil Suit No.6/81 filed in the court of Civil Judge (Senior Division), Ahmedabad (Rural). In the aforesaid suit, on behalf of the defendant, application Exh.159 was

given requesting the court to recall the plaintiff's witness for further cross-examination. It was stated in the said application that, amendment application was given by the defendant in the suit which was granted and thereafter, some new issues were framed by virtue of amended written statement. The defendant, therefore, requested the court to allow him to cross-examine the plaintiff's witness as aforesaid issues were framed after cross-examination of the plaintiff's witness was over. The learned trial Judge has granted the said application and the defendant was permitted to take cross-examination in reference to issue nos.5/A and 5/B.

#. Today, at the time of hearing this revision application, it was argued by Mr.Bukhari for the petitioner that, burden to prove the aforesaid issues nos. 5/A and 5/B is on the defendant and therefore, in order to prove these issues, it is not necessary to ask the plaintiff's witness to enter into the witness box again by way of further cross-examination. However, I am of the opinion that while exercising my revisional jurisdiction, I cannot interfere with the order of the trial court regarding recalling the witness for further cross examination, whether the defendant should discharge his burden or not or whether the witness is rightly recalled by the court or not, are all the orders during the proceedings of the suit and this being purely interlocutory order is not subjected to the revisional jurisdiction of this court under section 115 of the Civil Procedure Code unless there is jurisdictional error. It is not open for the court to correct all the orders, even the order contrary to law cannot be revised. So far as section 115 of the Civil Procedure Code is concerned, it can never be said that the order recalling of plaintiff's witness is the order without jurisdiction.

#. Even otherwise, at this stage, reference is required to be made to the decisions reported in 14 GLR page 617 in the case of Bai Hiragauri Vs. Abdul Kadar Mamadji and another as well as in AIR 1973 SC 76, even the error of law also cannot be corrected in the revision application under section 115 of the C.P.C.

#. I, therefore, do not find any substance in this revision application and hence the same is dismissed. Rule discharged with no order as to costs.

#. Since the suit is of 1981, the trial court is directed to dispose of the same on or before 30.4.2001 without fail.

(P.B.Majmudar,J)
(pathan)